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June 11, 2024

VIA ECF and EMAIL

Hon. Kenneth M. Karas, U.S.D.J.
The Hon. Charles L. Brieant Jr.
Federal Building and United States
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Courtesy Copy To:

Hon. Judith C. McCarthy, U.S.M.J.
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Re: *Baker v. Powell, et al.*, Case No. 7:23-CV-01626 (KMK)(JCM)

Dear Judge Kenneth M. Karas:

Pro bono counsel, Seiden Law LLP, and nonprofit Prisoners Legal Services of New York represent plaintiff Kristine Baker (“**Plaintiff**”) in the above-referenced matter (the “**Action**”). With the consent of the undersigned counsel for defendants Raldino Powell (“**Defendant Powell**”), Ellen Gomprecht (“**Defendant Gomprecht**”), and Amy Lamanna (“**Defendant Lamanna**,” all defendants together, “**Defendants**,” and together with Plaintiff, the “**Parties**”), the Parties write jointly to update the Court on the status of discovery and to respectfully request an extension of the discovery schedule set forth in the Case Management and Scheduling Order, as most recently extended on March 26, 2024 (the “**Scheduling Order**”) (Dkt. 51).

Status of Discovery

Since the Court’s last discovery extension, the Parties have remained in an ongoing dialogue to expedite and finalize the production of documents. Accordingly, the Parties (with the assistance of Magistrate McCarthy) negotiated and finalized ESI search terms, which resulted in a review set of approximately 13,000 documents (“**ESI Documents**”). Immediately upon finalizing search terms, the Parties met and conferred to discuss the terms of the Office of the Attorney General’s (“**OAG**”) usage of “technology assisted review” and contract attorneys to complete the review of the ESI Documents. After this meet and confer, OAG agreed to presumptively mark a few categories of search terms as presumptively responsive and would, therefore, only review the related ESI Documents for privilege. The Parties anticipate receiving the production of responsive and non-privileged ESI documents on or before June 14, 2024.

In addition to the ESI Documents, the Parties have continued to produce documents and have remained active in negotiating any deficiencies within productions. For example, Plaintiff has requested Defendant Powell produce certain metadata in relation to Defendant Powell’s cell phone carrier and Gmail account, which is directly relevant to both Plaintiff’s allegations against Defendant Powell and his defenses thereto. Similarly, Plaintiff has requested OAG produce specific metadata from various phone call recordings obtained and analyzed during the course of

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the Office of Special Investigation's ("OSI") investigation into Plaintiff's allegations of sexual abuse asserted against Defendant Powell. The metadata requested (*e.g.*, the date of the phone call, the phone numbers associated with the phone call, the incarcerated individual that placed the phone call, etc.) were confirmed to exist at the FRCP 30(b)(6) deposition of the Department of Corrections and Community Supervision ("DOCCS"). Despite the efforts of counsel, and notwithstanding the expected production of the ESI Documents on June 14, 2024, OAG informed Plaintiff that DOCCS had requested an additional three-weeks (around the end of June) to produce the outstanding documents (to the extent they exist), including numerous deficiencies that Plaintiff has requested be remedied (some of which date back to January 2024).

Finally, despite not having the ESI Documents or a substantially complete set of documents, the Parties have made efforts to proceed with discovery. To date, Plaintiff has completed two depositions: the FRCP 30(b)(6) deposition of DOCCS and the deposition of fact witness Dr. Wanda Bates – an Office of Mental Health Psychologist.

Scheduling Conflicts

Although the Parties have made substantial efforts to complete discovery within the current schedule, the Parties have serious concerns about doing so. First, the Parties are likely going to conduct at least *nine* additional fact witness depositions. Specifically, Plaintiff intends to conduct at least six additional fact witness depositions, including Defendants, OSI investigators Christian Nunez and Zachary Thornton, and Bedford Hills Correctional Facility Asst. Deputy Supt. PREA Compliance Manager Elaine Velez. Defendants intend to complete three additional fact witness depositions, including Plaintiff, and Plaintiff's parents (Hope and Charles Baker).

Plaintiff has been prevented from moving forward with the aforementioned six depositions because of DOCCS' delay over the production of crucial documents. Plaintiff requires these documents in order to complete the remaining six depositions and has proceeded with as many depositions as possible without these documents.

Additionally, even if all document production is completed immediately and no production related disputes arise, the Parties respective trial and personal schedules are conflicting and will prohibit the completion of depositions within the current schedule. Notably, Attorney DeMarco, as a solo-practitioner, is on trial the second half of June and cannot delegate his trial responsibilities to another attorney. Similarly, lead trial counsel for Plaintiff, Seiden Law, will be conducting an in-person arbitration hearing in Philadelphia during the majority of July.

At this time, it is not practicable to complete depositions within the current discovery schedule. Accordingly, the Parties are requesting the below referenced extension. The current deadlines and proposed extended deadlines are shown in the chart below:

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	Current Deadline	[Proposed] New Deadline
Requests to Admit	June, 4, 2024	October 1, 2024
All fact discovery	July 31, 2024	October 15, 2024
Plaintiff's expert reports	July 31, 2024	November 15, 2024
Defendants' expert reports	August 31, 2024	December 13, 2024
Movant's Pre-Motion Letter due	September 25, 2024	January 7, 2025
Non-Movant's Response	October 2, 2024	January 15, 2025
Completion of All Expert Disclosures	September 30, 2024	January 15, 2025

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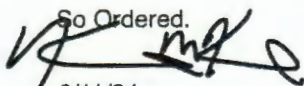
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The revised discovery schedule is approved, but there will be no further extensions. The next case management conference will be 2/ 13 /25, at 10:30

So Ordered.

 6/11/24